CURRENT DECISIONS

CONSTITUTIONAL LAW—EMINENT DOMAIN—RESTRICTION OF APARTMENT-HOUSES AS AESTHETIC USE.—A state statute provided for the designation of residence districts by city councils, from which apartment-houses and other unwelcome erections were excluded. Compensation was provided for the property owners who might be out of pocket thereby. The plaintiff, after being refused a permit to build an apartment-house in a restricted district, brought *mandamus* against the inspector of buildings to compel the issuance of one. *Held,* that the writ should be refused, this being a public use and a proper subject for the exercise of eminent domain. Brown and Dibbell, JJ., *dissenting*. *State v. Houghton* (1920, Minn.) 176 N. W. 159.

In the original hearing the court held this to be an aesthetic use merely, and not a public use, classing it with the billboard cases. *State v. Houghton* (1919, Minn.) 174 N. W. 885. The same court had previously held that such statutes restricting the building privileges of property owners were not to be sustained under the police power. *State v. Houghton* (1916) 134 Minn. 226, 158 N. W. 1017. No previous decision has been found openly holding a use admittedly aesthetic, unaccompanied by any other advantage to the public, to be a proper subject of eminent domain. *Cf.* Larremore, *Public Aesthetics* (1906) 20 HARV. L. REV. 35. Yet the use in the instant case is mainly, if not wholly, aesthetic, and the Minnesota court, without subterfuge, declares it public. The decision is sound and welcome. It is submitted that similar statutes may ultimately be sustained, even in Minnesota, under the police power. *Cf.* Freund, *Police Power* (1904) 165. For an excellent discussion of the billboard cases, see Terry, *Constitutionality of Statutes Forbidding Advertising Signs on Property* (1914) 24 YALE LAW JOURNAL, 1; also (1917) 26 *ibid.*, 420; (1919) 28 *ibid.*, 835.

CONSTITUTIONAL LAW—STATE CONSTITUTIONAL PROVISION REQUIRING DEFENCE OF CONTRIBUTORY NEGLIGENCE TO BE LEFT TO THE JURY.—Article 23, section 6 of the Constitution of Oklahoma provides that "the defence of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact, and shall at all times be left to the jury." *Held,* that this provision did not violate the federal Constitution. *Chicago etc. R. R. v. Cole* (1920) 40 Sup. Ct. 68.

In the words of Justice Holmes: "There is nothing, however, in the Constitution of the United States or its Amendments that requires a State to maintain the line with which we are all familiar between the functions of the jury and those of the Court." See COMMENTS, *supra,* p. 896.

CONSTITUTIONAL LAW—STATE SEDITION ACT VALID.—Prior to the federal Espionage Act Montana enacted a statute in similar terms, under which the present petitioner in *habeas corpus* was convicted. When called on by a mob to kiss the flag, he had objected that it was "nothing but a piece of cotton with a little paint on it . . . It might be covered with microbes." *Held,* that the writ would not issue, as a state may legislate in protection of the flag. *Ex parte Starr* (1920, D. Mon.) 263 Fed. 145.

This case brings out once again, and forcibly, that the question of free speech is primarily not one of law or constitutionality, but of policy and community ideals. See (1920) 29 YALE LAW JOURNAL, 337; Hart, *Power of Government over Speech and Press* (1920) 29 *ibid.*, 410.

CONTRACTS—DISCHARGE—IMPOSSIBILITY.—The plaintiff, a mining company, sued to recover damages for loss of profits resulting from a breach of the defendant's